



# RATH, YOUNG AND PIGNATELLI

*Professional Association*

ONE CAPITAL PLAZA · P.O. BOX 1500 · CONCORD, NEW HAMPSHIRE 03302-1500  
TELEPHONE (603) 226-2600 · FACSIMILE (603) 226-2700

CHARLES G. WILLING, JR.  
Attorney at Law

E-mail: [cgw@rathlaw.com](mailto:cgw@rathlaw.com)

August 18, 2005

Mr. Howard B. Bernstein  
RPS Program Manager  
Massachusetts Division of Energy Resources  
100 Cambridge Street, Suite 1020  
Boston, MA 02114

**RE: Comments on Proposed Changes to Massachusetts RPS Regulations**

Dear Mr. Bernstein:

The following are the comments of Rath, Young and Pignatelli, P.A. regarding the proposed revisions to Massachusetts RPS regulations as described in the Notice of Inquiry issued by the Division of Energy Resources (DOER) dated July 1, 2005. In offering these comments, we do not speak for our clients or take a position on behalf of any party other than our firm.

1. DOER proposes to treat four biomass plants with pending SOQ Applications under the current rules applicable to retooled biomass facilities. To formalize that proposal, DOER's proposed new regulations should specifically state that such plants will be accepted into the RPS program under the current rules assuming issuance of SOQs, construction of the required improvements and compliance with the rules.
2. Prospectively, DOER should allow retooled biomass plants to participate in the RPS program as "new". The goal of the Massachusetts RPS program is (or should be) to increase the Commonwealth's use of electricity generated or procured from renewable energy sources, whether existing or new. To be sure, the Massachusetts program focuses its incentives on "new" renewable projects. This focus undoubtedly reflects an assumption that already-operating renewable projects will continue to operate without the incentive of participation in the RPS program. But aging biomass plants are different. Many of these plants have operated under long-term, above-market PURPA contracts signed in the 1980s, are uneconomic without incentives to continue operating, and are therefore at risk of shutting down when their PURPA contracts expire. Some plants whose PURPA contracts have expired have already shut down. Recognizing these circumstances, the Massachusetts legislature gave DOER the latitude to include refurbished biomass plants in the RPS program as new. DOER has done so up to now, and it should continue to do so. All stakeholders would agree that the

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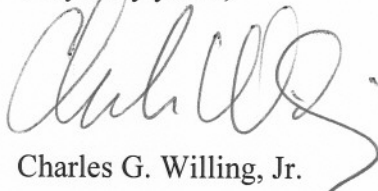
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Massachusetts RPS program would be more successful if new renewable projects displace fossil fuel plants than if they displace existing renewable projects.

3. The RPS statute includes in the program plants using "low-emission, advanced biomass power conversion technologies". DOER has previously treated "low-emission" and "advanced" as separate criteria, but it would be better public policy if DOER did not select or rule out any particular biomass conversion technologies. It is not clear to us what important public policy objective is achieved by layering a technology or efficiency requirement on top of the emissions requirement. The industry's experience with stoker technology – once assumed incapable of delivering high performance with low emissions, now proven to so capable with appropriate retrofits – illustrates the pitfalls of regulators dictating or barring particular technologies. Since an emissions standard is the most important and relevant standard applicable to biomass plants, DOER should streamline the requirements by treating "low emissions" plants as de facto "advanced" and then stand back and let the market determine in which technologies capital should be invested to meet the emissions standard. In the end, the market will deliver energy to Massachusetts utilities and ratepayers that is just as green if not more so, but at a lower cost, which is the optimal result.
4. Once DOER has set emissions or other standards for any biomass plants, it should avoid changing the standards unless it gives long leadtime intervals before the implementation of any new standards. Capital does not flow to markets with uncertain rules. Sound investment decisions can be made on a 10-year basis, so DOER should avoid changing eligibility criteria for any projects already in the program except with a leadtime in the range of 10 years. We understand that projects already in the program when the proposed new rules become effective will not be subject to the risk of changing standards.

We appreciate the opportunity to provide our input on these proposed rules. Massachusetts (and in particular DOER) has been a leader in what is now a national trend toward greater reliance on renewable energy. Please feel free to contact me if you have any questions about the above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles G. Willing, Jr.", written in a cursive style.

Charles G. Willing, Jr.